IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1063 of 2000
WITH
CRIMINAL APPEAL No. 1073 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA Sd/-

HONOURABLE MR.JUSTICE K.A.PUJ Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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ANWARBEG AMIRBEG MIRZA @ ANWAR AZIZ MIRZA - Appellant
Versus
STATE OF GUJARAT & 1 - Opponents

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Appearance :

1. **CRIMINAL APPEAL NO. 1063 of 2000**

MR MM TIRMIZI for Appellant.
MR KT DAVE, APP for Opponent No. 1.
MRS VASAVDATTA BHATT for Opponent No. 2.

2. **CRIMINAL APPEAL NO. 1073 of 2000**

MR MJ BUDHBHATTI for Appellant.
MR KT DAVE, APP for Opponent.
MRS VASAVDATTA BHATT for Opponent No. 2.

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 16/11/2006
ORAL JUDGMENT

(**Per : HONOURABLE MR.JUSTICE K. A. PUJ**)

1. Since both these appeals are separately filed by the appellants – original accused in Sessions Case Nos. 271 & 60 of 2000 which were decided by a common judgment and order of the learned Additional Sessions Judge, Ahmedabad on 20.10.2000 and since both these appeals are heard together, they are being disposed of by this common judgment and

order.

1. Criminal Appeal No. 1063 of 2000 is filed by Anwarbeg Amirbeg Mirza @ Anwar Aziz Mirza, the accused in Sessions Case No. 271 of 2000 against his conviction for an offence punishable under Section 8 (c) read with Section 20 (b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short “the Act”), sentencing him for R.I. of 10 years with fine of Rs.1 Lac and in default thereof, to undergo S.I. of one year.

2. Criminal Appeal No. 1073 of 2000 is filed by Mr. Surajsinh Harjansing Jadon, the accused in Sessions Case No. 60 of 2000 against his conviction for an offence punishable under Section 8 (c) read with Section 20 (b) and 29 of the Act, sentencing him for R.I. of 10 years with fine of Rs.1 Lac and in default thereof, to undergo S.I. of one year.

3. The facts of the case have been detailed in the order and judgment of the learned Additional Sessions

Judge, Ahmedabad and, therefore, it is not expedient to repeat the same all over again in verbatim and in detail in this judgment. However, the basic facts which are necessary to be discussed in these appeals are as under :-

4. The complainant – Jitendrabhai N. Raghuvanshi, an Intelligence Officer of the Narcotic Control Bureau, Zonal Unit, Ahmedabad had received a specific information on 11.11.1999 regarding storage of narcotic drugs at the residential premises of Shri Surajsingh Jadon - appellant – accused in Criminal Appeal No. 1073 of 2000, at 7, Govind Park Society, Nr. Vijay Nagar, Navrangpura, Ahmedabad. The said narcotic drugs were being stored for Mr. Anwar Mirza, the appellant – accused in Criminal Appeal No. 1063 of 2000 resident of Patwa Sheri. The said information was reduced in writing and was brought to the notice of superior officer i.e. Mr. P.S. Tomar, Zonal Director, NCB, Ahmedabad. In pursuance of this information, a search warrant was issued by the Zonal Director, NCB, Ahmedabad and raid was

carried out. Prior to the same, however, surveillance at different point on the entrance of the society had been arranged. The officers of NCB reached the entrance road of Govind Park Society and two local panchas were called at the said place at around 17.00 hours. The panchas were appraised of the information. The staff and officers of NCB, Ahmedabad offered their personal security to the panchas which was denied by them. At around 17.20 hours, one young person supposed to be Anwar Mirza, medium built and having fair complexion and the beared was seen on a black coloured Kinetic scooter. The officers of NCB tried to stop him but he immediately fled the scene and was able to escape.

5. It is also the case of the prosecution that all officers of NCB present and panchas thereafter reached at the premises, namely, 7, Govind Park Society, Nr. Vijay Nagar, Navrangpura, Ahmedabad and it was learnt that the person who escaped came to meet Mr. Suraj Singh who was residing at first floor of the premises. The officers, staff and panchas entered

first floor of the said premises and Mr. Suraj Singh was found present in the premises. All the officers introduced themselves and Mr. Suraj Singh was informed that he and his residential premises was to be searched and was also informed that the same could be carried out in presence of a Gazetted Officer or a Magistrate, if he desire so.

6. He was also informed that the Zonal Director Mr. P.S. Tomar who was present, was a Gazetted Officer, on which the said Suraj Singh agreed to be searched in presence of him. All the officers then offered their personal search to Mr. Suraj Singh which was denied by him. On inquiring about any storage of narcotic drugs in his premises, the appellant after thinking for a while walked towards a steel container kept in the kitchen. The same was found locked and opened by the appellant himself. He took out two bags from the container. One was a blue and red coloured and the other was a plastic bag which had a chain to open and and was of design markings. First bag was opened and three packets covered in

English newspaper were found, which were tied by plastic thread. On opening the second bag, three packets were found in which one packet was wrapped with English newspaper and the other two packets were wrapped with plastic thread. Other two packets were in transparent polythene bag. All packets were opened and the substance found was tested with drug detection kit which answered positive for the presence of *charas*, a narcotic substance. All the packets found were weighed by the NCB Officers with the electronic weighing machine. The gross weight of the substance was total 8.36 Kgs. All the packets were opened and the substance was weighed which was of black green colour and round in shape and of different sizes. Net weight of the substance was found to be 8.062 Kgs. The investigating team thereafter has drawn three samples of 25 Grams each and sealed in presence of the panchas. The remaining substance was also packed and sealed in the presence of the panchas. Accordingly, panchnama was drawn and concluded on 11.11.1999.

7. It is also the case of the prosecution that the appellant – original accused No. 1 was summoned under Section 67 of the Act and his statement was recorded on 11.11.1999. In the statement, he has stated that he came in contact with Mr. Anwar three years prior to the date of incident who was involved in drug trafficking and selling of *charas*. Mr. Anwar gave him the contraband article on the very same day i.e. 11.11.1999 for storage. Accordingly, summons were issued under Section 67 of the Act to Mr. Anwar Mirza on 15.11.1999, 15.12.1999 and 24.12.1999, but he did not appear on the due dates. The complainant, therefore, lodged the complaint against the appellant – orig. accused No. 1 on 01.02.2000 under Section 8 (c), 20 (b) and 29 of the Act and the same had been registered as Sessions Case No. 60 of 2000.

8. It is further the case of the prosecution that the complainant received the information on 24.06.2000 that one person suspected as being accused was

present at Mehsana where, he was under inquiry of the police. The complainant, therefore, went there and on preliminary inquiry, he found that the suspected accused was the same person who was wanted in the incident of 11.11.1999. Summons was issued to him under Section 67 of the Act and when he volunteered to accompany him to NCB office, his statement on the very same day was recorded and his further statement was recorded on 25.06.2000 and he was arrested after following due procedure and intimation of the same was also sent to his family members. Complaint with regard to accused No. 2 has been filed subsequently on 24.07.2000 which was registered as Sessions Case No. 271 of 2000.

9. Since both the complaints were said to have arisen out of the same incident, Sessions Case No. 271 of 2000 was tagged with Sessions Case No. 60 of 2000 and with a special order, both these cases were tried and heard together as per the order passed below Exh. 2. The learned Additional Sessions Judge on

the basis of the averments and allegations made in the complaint, framed charge against the accused No. 1 on 10.04.2000 and on arrest of accused No. 2, the charge was again framed on 20.07.2000. The charge was read over and explained to the accused. The accused pleaded not guilty to the charges levelled against them and claimed to be tried.

10. In order to bring home the charge framed against the accused, prosecution has examined in all three witnesses and relied upon their oral testimonies. The details of these witnesses are as under :-

P.W. 1 – Pradipbhai Babulal Patel - Exh. 11
P.W. 2 - Devdattbhai Nanalal Oza - Exh. 14
P.W. 3 - Jitendrabhai Niranjanlal Raghuvanshi - Exh. 30

11. The prosecution has also placed reliance on the following documents to prove the culpability of the accused.

Sr. No.	Exh. No.	Particulars
01.	25	Report under Section 42 (2) of the Act dated 11.11.1999.
02.	13	Search warrant issued by the Zonal Director dated 11.11.1999.
03.	16	Notice under Section 50 of the Act to accused No. 1 dated 11.11.1999.
04.	12	Panchnama dated 11.11.1999.
05.	17	Documents seized during search on 11.11.1999.
06.	18	Summons under Section 67 of the Act issued to the accused No. 1 dated 11.11.1999.
07.	19	Statement of the accused No. 1 recorded under Section 67 of the Act on 11.11.1999.
08.	20	Arrest memo of the accused No. 1 dated 12.11.1999.
09.	21	Intimation of arrest of the accused No. 1 dated 12.11.1999.
10.	23	Forwarding letter of sending of drug samples to FSL, Ahmedabad and CRCL, New Delhi along with test memos dated 12.11.1999.
11.	24	Receipt of samples sent to FSL, Ahmedabad and CRCL, New Delhi dated 12/13.11.1999.
12.	22	Report under Section 57 of the NDPS Act to Zonal Director, NCB, Ahmedabad dated 12.11.1999.
13.	Mark A	Report under Section 57 of the NDPS

Sr. No.	Exh. No.	Particulars
		Act to DDG (E), NCB, New Delhi dated 12.11.1999.
14.	25	Summons issued to accused No. 2 and intimation letter dated 12.11.1999.
15.	26	Copy of summons issued to accused No. 2 dated 15.11.1999.
16.	33	Chemical report received from FSL, Ahmedabad dated 22.11.199.
17.	31	Summons issued to accused No. 2 and intimation letter dated 15.12.1999.
18.	32	Summons issued to accused No. 2 by Regd. Post and original summons received back dated 20.12.1999.
19.	34	Forwarding letter and chemical report received from CRCL, New Delhi on test memo dated 11.02.2000.
20.	35	Summons under Section 67 of the Act issued to accused No. 2 dated 24.06.2000.
21.	36	Statement of accused No. 2 recorded under Section 67 of the Act on 24.06.2000.
22.	37	Statement of accused No. 2 recorded under Section 67 of the Act on 25.06.2000.
23.	38	Arrest memo of accused No. 2 dated 25.06.2000.
24.	39	Report under Section 57 of the Act dated 26.06.2000.
25.	40	Intimation of arrest of accused No. 2

Sr. No.	Exh. No.	Particulars
		dated 27.06.2000.

12. After recording of the evidence of the prosecution witnesses was over, the learned Additional Sessions Judge explained to the accused the circumstances appearing against them in the depositions of the witnesses. Thereafter, further statements of the accused were recorded under Section-313 of the Code. In further statement also they denied the prosecution case in toto and reiterated that they are innocent and they have not committed any offence and that they have been falsely implicated in the offence punishable under the Act. The accused No. 1 had led an evidence of his wife in defence and she has been examined as D.W. 1 at Exh. 43 wherein she has stated that her husband was falsely implicated in the offence. The accused No. 2 has, however, not led any evidence in defence nor he examined himself on oath.

13.On appreciation, evaluation and analysis of the evidence adduced by the prosecution, the learned Additional Sessions Judge held that the prosecution has proved beyond doubt that all the accused have committed offence under Sections-8(c) read with Section 20 (b) and 29 of the Act and resultantly the learned Additional Sessions Judge has convicted and sentenced the accused to which reference is made in earlier paragraphs of this judgment, which has given rise to these two appeals.

14.Mr. Bhddhabhatti, learned advocate appearing in Criminal Appeal No. 1073 of 2000 for the appellant – original accused No. 1 has submitted that the appellant was wrongly convicted and sentenced under the provisions of the NDPS Act as the case against the appellant was not proved beyond reasonable doubt, in absence of any evidence whatsoever connecting the appellant with the crime. He has further submitted that the mandatory provisions of the Act have not been properly complied with and in that view of the matter, the

appellant ought to have been acquitted from the charges levelled against him in view of the judgment of the Hon'ble Apex Court as well as of this Court. He has further submitted that the information received by the Intelligence Officer of the NCB, Ahmedabad which was said to have been reduced in writing was not produced on the record for the perusal of the Court which has led to grave miscarriage of justice and has caused great prejudice to the appellant. The learned Additional Sessions Judge has committed grave error by observing that the prosecution has produced the information reduced into writing in the form of a report under Section 42 (2) of the Act and hence, the mandatory provision has been complied with. The learned Additional Sessions Judge has failed to appreciate that Section 42 (2) requires that the information which has been reduced in writing should be produced and not the report of the information which was sent to the superior Officer thereafter. Here in the present case, what has been produced on record is the report under Section 42

(2) to the superior Officer Mr. Tomar and not the information which was reduced to writing. The report of the information reduced to writing cannot be considered to be the same under the law. He has further submitted that the superior officer who was also a Zonal Director of NCB and under whose direction and guidance, the raid was organized, has not been examined by the prosecution at all. His non-examination by the prosecution has caused great prejudice to the appellant. It is the case of the prosecution that the appellant was informed about his right of search being carried out in presence of Executive Magistrate or a Gazetted Officer. Since the said raid was carried out in presence of Mr. Tomar as Gazetted Officer, the prosecution ought to have examined such an important witness. He has further submitted that the appellant was never informed that Mr. Tomar was a member of the raiding party and that he was a Gazetted Officer. He has, therefore, submitted that the provisions contained in Section 50 of the Act have not been complied with.

15. Mr. Buddhabhatti has further submitted that Mr. D.N. Oza – P.W. 2 was an Investigating Officer and hence, he could not have recorded the statement of the accused under Section 67 of the Act as it is directly in violation of the provisions contained in Section 53-A of the Act. He has further submitted that the information was received by the Intelligence Officer of NCB at 11.00 a.m. and the entire raid was taken place at about 16.30 p.m. which is highly improbable and unbelievable. The steel container and the lock and keys from which the contraband articles were alleged to have been received were neither seized nor produced before the Court as evidence. The truthful version of the defence witness who was the wife of the appellant and was examined by the appellant as a defence witness was not accepted by the learned Additional Sessions Judge and instead of appreciating the probative value of the deposition, has discarded the said evidence by pointing out minor discrepancies and omissions therein. The further statement of the

appellant recorded after the closure of the pursis, clearly indicates that the appellant has been falsely cropped in by P.W. 2 by calling him under the pretext of colour work since the appellant was working as a Contractor. The appellant had further alleged that the panch Chandrakant had strain relations with the appellant and, therefore, had deliberately given false evidence against him. The search warrant Exh. 30 was prepared subsequently at the time when the raid was carried out. In search warrant, the name of the appellant was written by handwriting of the officer of the Narcotic Cell which raised very serious doubt against the genuineness of the incident. The report under Section 42 (2) Exh. 15 raises very serious doubt about its genuineness. The name of the appellant and his address was mentioned in it and it was written at about 12.00 hours. It, therefore, clearly indicates that the said document was prepared after the raid was carried out. The alleged statement of the appellant recorded under Section 67 Exh. 19, was recorded under threat, duress and coercion and it was not a

voluntary statement. It was clearly stated in the further statement recorded under Section 313 of the Code. He has, therefore, submitted that no reliance could have been placed by the prosecution on the alleged statement of the appellant recorded under section 67 of the Act. Even otherwise, the said statement was not a voluntary one and it was retracted subsequently. Based on the aforesaid submissions, Mr. Buddhabhatti has strongly urged that the appeal of the appellant deserves to be allowed and the appellant is required to be acquitted forthwith.

16. Mr. M.M. Tirmizi, learned advocate appearing for the appellant – accused No. 2 in Criminal Appeal No. 1063 of 2000 has submitted that the information was received by the Intelligence Officer of the NCB, P.W. 2 at 11.00 a.m. on 11.11.1999 to the effect that the narcotic drugs were being stored for/by Shri Anwar Mirza resident of 1458 Rangrej Pole Patwa Sheri, Relief Road, Ahmedabad at the place of Suraj Sing Jodan at 7, New Govind Park Society, Vijaynagar,

Naranpura, Ahmedabad. The Intelligence Officer took 2 to 4 hours to manage for the manpower for the raiding party and the testing kit etc. and reached the scene of offence at around 04.00 p.m. The officer of the Anti-Terrorist Squad were also informed to reach straight at the gate of the society. Thus, they, in fact, were waiting for the appellant to reach the scene of offence and deliver the contraband articles. But even after making such elaborate preparation and waiting in surveillance, they could not catch the appellant in the house of the Suraj Sing Jodan nor while he left, although an attempt was made to catch him. Thus, it is very doubtful that the appellant had, in fact, gone to the scene of offence for delivering the contraband articles as alleged and neither of the persons in surveillance had seen him. As per the statement of the original accused No. 1, the name of the appellant accused No. 2 is Anwarbeg Amirbeg. However, in the entire case, the name of the accused is referred as Anwarbeg Azigbeg. Thus, there is vast discrepancy in the name of accused. More over, at

the time when the judgment was pronounced, the appellant – accused No. 2 himself was absolutely in imbalanced mind and, therefore, unfortunate incident had occurred for which the appellant tendered an unconditional apology to the Court. Even in the statement of the co-accused, only the name of Anwar appeared and the panchnama allegedly drawn at the scene of offence contained the name of Anwar Mirza. Moreover, it is not clear from the statement of the co-accused that this very appellant was engaged in the alleged offence. The summons admitted to be served on the appellant – accused No. 2 bore different addresses and hence, it could not have been inferred that the investigating agency was so sure as to which accused they are looking for. The appellant was arrested after being brought from Mehsana where he was apprehended by the Mehsana police and was under investigation on the basis of information received by Mr. P.S. Tomar, Zonal Director, NCB. However, no formalities had been observed while bringing the appellant from Mehsana and the Investigating

Officer Mr. J.N. Raghuvanshi deposed that he was handed over merely on his giving his introduction to the police officer at Mehsana and the statement of appellant was recorded at NCB Office which took 4 to 5 hours and he was allowed to go at 8.00 to 8.30 p.m. and he was required to report in the next morning wherein he has given his further statement. The said statement has been retracted by the appellant – accused No. 2 on 07.07.2000 alleging that he was mercilessly beaten for the whole night and his thumb impression had been taken on the alleged statement. No reliance could have been placed on this retracted statement. The appellant has been convicted only on the basis of the statement of the co-accused. However, no incriminating substance has been found from the appellant during the investigation. No attempt has been made to corroborate the confessional statement of the appellant with the independent evidence so as to implicate him in such a serious offence. He has, therefore, submitted that the impugned judgment and order of the learned Additional Sessions Judge is

required to be quashed and set aside.

17. Mrs. Vasavdatta Bhatt, learned Central Government Counsel appearing for the Narcotic Control Bureau in both these appeals, on the other hand, has strongly supported the case of the prosecution and submitted that the learned Additional Sessions Judge after appreciation of facts and considering the relevant statutory provisions and on applying the decided cases to the facts of the present case, has come to the just and proper conclusion and rightly convicted both these accused and hence, this Court should not disturb the finding and conclusion arrived at by the learned Additional Sessions Judge. She has further submitted that by voluminous evidence produced by the prosecution, the complicity of both these accused is proved beyond reasonable doubt. The contraband article *charas* was found from the house of the accused No. 1 and the house of the accused No. 1 was used for storage of contraband articles delivered by the accused No. 2. She has further submitted that while taking out search of the

house of the accused No. 1 and seizing the contraband articles, all necessary formalities have been observed by the raiding party. The provisions contained in Section 42 as well as 50, 55 & 57 have been complied with. The statement of the accused was recorded under Section 67 of the Act and as per this confessional statement, the case of the prosecution was established beyond any reasonable doubt. The statement recorded under Section 67 of the Act by the officials of the Narcotic Control Bureau were voluntary and the allegation regarding threat or duress made against the officials was merely an after-thought as it was not made at the time when the accused were first produced before the Magistrate.

18. So far as accused No. 2 is concerned, Mrs. Bhatt has submitted that he is the history-sheeter and involved in many cases. Even after his arrest, when he was released on parole, he was caught once again by the Narcotic Control Bureau, Ahmedabad in Balasinor while giving delivery of *charas* of 40 Kgs. On

15.07.2003. Offence was registered against him being NDPS Case No. 01 of 2004 before the learned Sessions Judge, Nadiad and the entire trial is almost complete and the judgment is awaited. On the basis of this submission and the statutory provisions as well as the case law, Mrs. Bhatt has submitted that the Learned Trial Judge has perused the entire record, documents and material placed before her for her consideration and she has considered all the relevant material documents and the case law and come to the just and proper conclusion and rightly convicted both the accused and hence, the impugned judgment and order passed by the learned Additional Sessions Judge convicting both these accused cannot be interfered with.

19. Mr. K.T. Dave, learned Additional Public Prosecutor appearing for the State of Gujarat in both these appeals has also supported the case of the prosecution and submitted that all the legal formalities have been observed and the accused were rightly convicted and sentenced by the learned

Additional Sessions Judge. He has adopted the arguments and submissions made by Mrs. Vasavdatta Bhatt, learned advocate appearing for the Narcotic Control Bureau.

20. This Court has considered the submissions advanced by the learned advocates appearing for the parties and perused the impugned judgment and order. This Court has undertaken a complete and comprehensive appreciation of all vital features of the case and the entire evidence on record which is read and re-read by the learned advocates for the parties with reference to broad and reasonable probabilities of the case. In light of caution sounded by the Supreme Court while dealing with NDPS cases, this court has examined the entire evidence on record for itself independently of the trial Court and considered the arguments advanced on behalf of the accused and infirmities pressed, scrupulously with a view to find out as to whether the trial Court has rightly recorded the order of conviction and sentence against both the accused

21. At the outset, be it noted that to combat illicit drug traffic and drug abuse, both at the national and international levels, the penal provisions contained under the NDPS Act are stringent and punishment thereunder is harsh, therefore, as per the settled principles of criminal jurisprudence, the Court of law must insist on the strict compliance of the safeguards provided under the statutory provisions contained thereunder.

22. In view of the stringent penal provisions and harsh punishment provided thereunder and in view of the observations made by the Hon'ble Supreme Court in the several judgments, we have to find out as to whether in instant case strict compliance of the safeguards provided under the statute have been observed by the NCB Officials during the course of search of the accused and seizure of the muddamal, contraband article, *charas* and the trial court has considered the evidence in proper perspective and rightly recorded the order of conviction.

23.P.W. No. 2 – Mr. D.N. Oza, an Intelligence Officer has deposed that on 11.11.1999, he received an information that a person named Anwar stored the contraband articles *charas* at 7, Govind Park Society, Nr. Vijay Nagar, Navrangpura, Ahmedabad. He informed his Zonal Director about the said information which is in the form of report under Section 42 (2) of the Act. The information was received by him at 11.28 hours and the original information with this report Exh. 15 kept in a sealed cover was handed over to Mr. Tomar, Zonal Director of NCB. Thereafter, the raid was carried out in presence of panch witnesses. The provisions contained in Section 50 of the Act have also been complied with by informing the accused about his desire of taking search in presence of either Magistrate or Gazetted Officer. After weighing the muddamal articles and effecting seal thereon in different packets, the same was sent to FSL and report was obtained from FSL. After issuance of the warrant a statement under Section 67 of the Act

was recorded. The prosecution has also relied on the oral evidence of P.W. 1 – Pradipbhai Babulal Patel, panch witness. He supported the case of the prosecution. He also confirmed about the due observance of all statutory requirements. The prosecution further relied upon deposition of P.W. 3 – J.N. Raghuvanshi, Intelligence Officer of NCB.

24. A perusal of the testimonial collections, shows that the requirement of Section 42 & 50 of the NDPS Act have duly been complied with. Report u/S. 42 (2) is on record which clearly indicates the receipt of information. In oral testimony, in complaint as well as in panchnama, it is stated that the accused were asked as to whether they wanted to be searched in presence of a gazetted officer or Magistrate. The answer was in negative and hence we are of the view that the provision contained in Section 50 of the NDPS Act have also been complied with. An attempt is made to point out certain discrepancies from the evidences of the prosecution witnesses. We are, however, of the view that these discrepancies are of

very minor and negligible in nature. It would not affect the case of the prosecution. The learned Additional Sessions Judge has at length discussed the evidence and after scrupulously examining the same has come to the right conclusion.

25. Over and above the evidence of the prosecution witnesses and the material produced on record, confessional statements of accused Nos. 1 & 2 were recorded wherein they have confessed about their involvement in commission of the offence. In their confessional statements, the accused had given minute details of their family background and their dealing with the contraband articles, namely, *charas*. Their statements were also discussed in detail by the learned Additional Sessions Judge and necessary findings as well as conclusions were drawn therefrom. It is true that the accused No. 1 in his further statement has retracted and led the evidence of his wife and denied his involvement in the offence. Similarly, accused No. 2 has also retracted subsequently by writing a letter. However, this

retraction is only an after-thought and the same does not inspire the confidence of the Court. The details given by the accused in the confessional statements cannot be in any case mere imagination or concoction by the Officers of the Narcotic Control Bureau. These statements are wholly reliable and conviction can be sustained on the basis of these statements. For culpability of the statements recorded under Section 67 of the Act and for convicting the accused and awarding sentence to the accused, based on such confessional statements, necessary supports can be derived from the following judgments :-

(a) In ***Husen Bhenu Malad and Others V/s. State of Gujarat and Others, 2003(2) G.L.H. 705****, the Division Bench of this Court, wherein one of us, A.M. Kapadia, J. is a party, has held that it cannot be laid down as an absolute rule of law that the statement of an accused recorded under Section 108 of the Customs Act and Section 67 of the NDPS Act cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. To put it differently,*

there is neither rule of law nor of prudence that the statement cannot be acted upon without corroboration. If the Court is satisfied that the statement is true and voluntary in nature, it can base conviction on it without corroboration. The Court has to scrutinize the statement carefully and must ensure that the statement is not result of coercion, duress or undue influence.

(b) In ***M. Prabhulal V/s. Assistant Director, Directorate of Revenue Intelligence, (2003) 8 SCC 449****, the Hon'ble Supreme Court has held that the accused – appellants in that case did not make any complaint before the Magistrate before whom they were produced complaining of any torture or harassment. It is only when their statements were recorded by the Trial Judge under Section 313 of Criminal Procedure Code that a vague statement about torture was taken. Under these circumstances, the confessional statements cannot be held to be involuntary. The statements were voluntarily made and can, thus, be made the basis of conviction.*

(c) In ***Mukesh Natvarlal Modi V/s. H.S. Barot and another, 1998 – XXXIX (1) G.L.R. 639****, the Division Bench of this Court has held that statements of accused and his family members were*

recorded by Customs Officers and since Customs Officers not being Police Officers, these statements are admissible in evidence. Here in the present case, statements are recorded by the NCB Officials and he is not the police officer.

(d) In ***Usmanbhai Chandbhai Mansuri V/s. State of Gujarat and another, 2003 (3) XLIV (3) G.L.R. 1082****, the Division Bench of this Court has held that it is settled position that safeguards in respect of recording confessional statement as contained in Section 164 of the Criminal Procedure Code are not required to be followed by the empowered Officer, while recording statement under Section 67 of the NDPS Act until requirement is to ascertain whether such statement is voluntary or not.*

(e) In ***Surendra Kathadbhai Jebalia V/s. State of Gujarat, 2003 (3) XLIV (3) 2096****, the Division Bench of this Court has held that conviction can be found on retracted confessional statement of accused. If the statement was voluntary and it was true, then even if it is retracted, the inculpatory statement could be relied upon to base conviction. At the most, it would be required to examine the evidence and look for circumstances or evidence to reassure itself about the confessions made. The*

Court has found as a matter of fact that there is ample evidence regarding involvement of accused Nos. 3 to 5 & 6 in a narcotic crime, as they are found to be transporting Mandrax tablets in large quantity. There is oral evidence of Officers of D.R.I. and panch witnesses which connect them with the contraband. Their statements under Section 67 are only additional factors to lend support to the prosecution case. The Court further held that there is no dispute that a series of statements were recorded from many of the accused persons. But that by itself is not a ground to infer that the statements were given under duress. It cannot be overlooked that persons involved in such organized criminal activity would not readily volunteer to give inculpatory statement. In such situation, a tactful and specialised method of interrogation may be required to be resorted to which may help in bringing out the truth and, therefore, repetitive statements by themselves cannot vitiate the statements with duress. This by itself will not affect the prosecution case.

(f) In ***Surjeet Singh Chhabra V/s. Union of India and others, (1997) 1 SCC 508****, the Hon'ble Supreme Court has held that in view of the confession made by the importer – petitioner that he had purchased the gold and brought the same, he is bound by the same and the failure to give him the*

opportunity to cross-examine the witnesses is not violative of principle of natural justice. The customs officials are not police officers. The confession, though retracted, is an admission and binds the petitioner. So, there is no need to call panch witnesses for examination and cross-examination by the petitioner.

26. From the foregoing discussion, it can certainly be said that there is no absolute rule of law that the statement of an accused recorded under Section 108 of the Customs Act and Section 67 of the NDPS Act cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence. To put it differently, there is neither rule of law nor of prudence that the statement cannot be acted upon without corroboration. If the Court is satisfied that the statement is true and voluntary in nature, it can base conviction on it without corroboration. The Court has to scrutinize the statement carefully and must ensure that the statement is not the result of coercion, duress or undue influence. In that view of

the matter, the statements made by the accused under the provisions of Section 67 of the Act before the NCB Officials are voluntary and without coercion, duress or undue influence as their statements were recorded as per their free will and retraction made subsequently has no relevance whatsoever looking to the facts of the case.

27. On close scrutiny of the evidence on record, we find no infirmity in the impugned judgment and order. We are in complete agreement with the finding, ultimate conclusion and the resultant order of conviction and sentence recorded by the learned Additional Sessions Judge as, according to us, on the facts and in the circumstances of the present case, no other conclusion is possible except the one reached by the learned Additional Sessions Judge. We, therefore, confirm the order of conviction and sentence recorded by the learned trial judge. Since the Learned Trial Judge has dealt with all issues factual as well as legal raised before her and reiterated before us and since we are in full

agreement with the findings arrived at and conclusion drawn by her, we need not think it proper to elaborately discuss the same in our judgment.

28. Seen in the above context, there is no valid reason or justifiable ground to interfere with the impugned judgment and order of conviction and sentence. Hence the appeal lacks merit and deserves to be dismissed.

29. Before parting, we would like to take note of the fact that in the concluding paragraph of the impugned judgment, the learned Additional Sessions Judge while putting further note has observed that the accused No. 2 has thrown his slipper targetting it to the Presiding Judge. It is true that the learned Additional Sessions Judge has shown magnemity and observed that considering this as an expression of his emotionally imbalanced state of mind in view of the order of punishment passed against him, the Court desist itself from taking any action against him in this respect. We appreciate the approach shown

by the learned Additional Sessions Judge. However, at the same time, we strongly condemn the said action of the accused No. 2 and observe that the same is not merely an expression of his emotionally imbalanced state of mind but it is an insult and disrespect to the Court and the Court should not have taken such action so lightly and should have taken very stringent action including initiation of contempt proceedings or imposition of maximum punishment under the Act. Wherever and whenever such incident takes place, the Court should be very strict as in our opinion no interference in the administration of justice by showing any disrespect to it be tolerated.

30. With the aforesaid observation, both these appeals are accordingly dismissed.

Sd/-
[A. M. KAPADIA, J.]

Sd/-
[K.A. PUJ, J.]

S*avariya*